

REMARKS

Applicant thanks the Examiner for the Examiner's comments, which have greatly assisted Applicant in responding.

CLAIM REJECTIONS – 35 U.S.C. §112

Claim 17 is rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully traverses.

To address the rejection raised with regard to claim 17, claim 17 has been amended on the basis of the published specification in paragraph [0026] by defining that the sides of the top which face the crate opening or which face away from the crate opening are provided with a profile that conforms to the profile of the lateral walls wherein the sides of the top can be placed on the upper side of the lateral walls of the crate. Applicant's position is that such amendment should overcome the objection raised with regard to claim 17, as the just mentioned paragraph [0026] of the published application provides for a sufficient disclosure for reducing the teachings of claim 17 to practice. That is, the enablement requirement should be met by newly amended claim 17 and also that the subject matter defined in this claim is clearly derivable from paragraph [0026] of the published specification.

Removal of the rejection and reconsideration are respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 103

(a) Claims 12, 14, and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392.) Applicant respectfully traverses.

Claim 12 is amended by adding that the lateral walls of the crate are structured to define a lattice, as it is described in paragraph [0026], more specifically on page 3, left hand column, lines 7-40 of the published application. On the basis of this part of the specification and on the basis of pending claim 15, Claim 12 is defined by fasteners that are attached to the top and are releasably engageable with the lattice structured lateral walls of the crate.

The subject matter as defined in newly amended claim 12, in Applicant's opinion, is allowable over the available art. As is outlined in the introductory portion of the present application, the invention starts from a prior art in accordance with which transport containers are used for transporting goods like fruits and vegetables, however, during a harvesting season the fruits and vegetables to be transported may vary in size so that the number of goods which can be received within a container may change. Since it is, in general, desired to provide a constant number of goods within a container, this would require the use of different types of containers over the harvesting season, which is not desired as is outlined in the introductory portion.

To solve the problems mentioned above, the inventive approach is to provide an additional frame-like element on top of the base crate simply increasing the height of the walls of the crate temporarily. In accordance with embodiments of the invention, this top is manufactured in such a manner that it can be folded and thereby sent together with the transport crate without increasing the height thereof when it is not desired. Upon packing the goods into the crate, the additional top can be attached so that the desired number of goods can be accommodated within the crate. After transporting the goods to the destination and removing the goods from the top, the top, which may be made from wood or cardboard, may simply be disposed.

In accordance with the teachings of the present invention, it is important that the basic functionality of the base crate is maintained, i.e. that the additional top is

sufficiently strong, and at the same time, the handling of the top should be easy. In accordance with the inventive approach, as it is defined in amended claim 12, the basic structure of the crate is such that it has a lattice-structured set of side walls or lateral walls and the fasteners of the top are releasably engageable with the lattice structured lateral walls of the crate, thereby providing for a simple and easy to handle the fastening mechanism which does not require any modification of the basic structure of the crate as the lattice-structured lateral walls provide for sufficient possibilities for engagement with the fasteners as is described in detail in paragraph [0026] of the published specification.

Turning now to the disclosure of the prior art documents, as far as claim 12 is concerned, it is to be noted that neither of the documents cited in the proceedings so far discloses a transport container system being formed of a crate and a top that is to be attached to the crate for increasing the height thereof, wherein the lateral walls of the crate are structured to define a lattice, and wherein fasteners of the top allow an engagement with these lattice-structured lateral walls.

To be more specific, the disclosure of Heymann (US Patent 4,527,707) describes a device for securing a glass or dish rack to a debris holding tray for collecting waste fluid and debris from glasses, cups or dishes prior to washing in an automatic dishwasher. The rack 4 and the debris holding tray 12 are secured with respect to each other by using attaching means that are for example realized by the members 20 shown in Fig. 1, the members 56 shown in Figs. 7 to 9 and the members 62 shown in Fig. 10. As can be seen from all embodiments of the disclosure of Heymann, the basic element, namely the tray 12, is not provided with a lattice-structured lateral wall, and as far as the attachment means for attaching the top 8 to the bottom 12 are concerned only those embodiments having the attaching means secured to the top are of interest. As can be seen from Figs. 7 to 11, in all these embodiments the lower part, namely tray 12, is specifically designed for receiving elements of the locking members, for example

note the grooves 48 in Fig. 9 or the grooves at the corner portions in Fig. 11. Nothing in this document suggests that the element 12 should be provided with a lattice-structured lateral wall for engagement with a fastener in a manner as taught by the present invention.

Thus, even when assuming a combination of the teachings of the disclosure of Heymann and the teachings of the disclosure of Sluiter (US Patent Application 2002/0033392 A1) this would not suggest the inventive transport container system as defined in the newly amended claim 12, as clearly, Sluiter does not describe a container system comprising a crate and a top with a crate formed of lattice-structured lateral walls to which a fastener of the top is attached.

Thus, a combination of the disclosures of Heymann and Sluiter does not suggest the inventive approach as defined in new claim 12. Removal of the rejection and reconsideration are respectfully requested.

The dependent claims depend directly or indirectly from claim 12 that has been discussed. Therefore, those claims are deemed patentable for the reasons given above. In addition, each of the dependent claims separately introduces features that independently render the claim patentable. However, due to the fundamental differences already identified, and to expedite positive resolution of the examination, separate arguments are not provided for each of the dependent claims at this time. Removal of the rejection and reconsideration are respectfully requested.

(b) Claims 12-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392.) Applicant respectfully traverses.

The same rationale as set forth above is true for a combination of the disclosure of NL 9300986 and the disclosure of Sluiter. As can be seen from the Dutch

patent application, same describes a container comprising a base element and an additional wall element (see Figs. 2 and 3) that can be mounted on top of each other, thereby enlarging the volume of the base element 2. The additional wall element has protrusions 5 with tongues 6 that are to be inserted into a hollow space within the wall of the base element 2 for engagement through the recesses 7. As can be seen from Fig. 1, the protrusions 5 are such that same are biased to the position as shown in the middle drawing and in the right-side drawing of Fig. 1. By means of the rod 8 that can be moved upward and downward, the protrusion 5 is urged into a position where the tongue 6 enters the recess 7. The rod maintains this position, thereby "locking" the tongue 6 in the locked position. Thus, in accordance with the teachings of the Dutch publication it is required to provide a complicated structure of the bottom part, namely a bottom part having wall portions being thick enough to receive the protrusion 5 and the locking mechanisms 8, which must be provided in addition to the other elements.

Nothing in the disclosure of the Dutch document suggests providing the lateral walls of the part 2 as a lattice and providing fasteners for the top such that same can be engaged with the lattice structured lateral walls of the crate.

Thus, a combination of the Dutch document and Sluiter cannot suggest the inventive solution as defined in claim 12. Removal of the rejection and reconsideration are respectfully requested.

The dependent claims depend directly or indirectly from claim 12 that has been discussed. Therefore, those claims are deemed patentable for the reasons given above. In addition, each of the dependent claims separately introduces features that independently render the claim patentable. However, due to the fundamental differences already identified, and to expedite positive resolution of the examination, separate arguments are not provided for each of the dependent

claims at this time. Removal of the rejection and reconsideration are respectfully requested.

(c) Claims 12 and 14-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392.) Applicant respectfully traverses.

A combination of US Patent 4,460,214 to Kuhns and Sluiter does not suggest the inventive approach. Kuhns describes a vehicle side extension for increasing the volumetric capacity of a vehicle body. As can be seen from the figures, the additional element is not formed with lateral walls being lattice-structured. Contrary to the inventive approach fasteners are provided in a manner as shown in Fig. 4, *i.e.* angled elements are provided which need to be screwed to the top and the bottom part for securing the elements with respect to each other. Thus, there is no teaching of a fastener attached to the top for releasably engaging with the lattice-structured lateral walls of the lower part, which as mentioned, are not present anyway.

Thus, a combination of the disclosures of Kuhn and Sluiter cannot suggest the inventive solution as defined in amended claim 12. Thus, the subject matter as defined in amended claim 12 is allowable over the available art, and by virtue of the dependency the subject matter of the remaining claims is also allowable. Removal of the rejection and reconsideration are respectfully requested.

(d) Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch in view of Sluiter and further in view of Sterett (5361906.) Applicant respectfully traverses.

As far as newly amended claim 17 is concerned, it is noted that this claim is also allowable over a combination of all the references cited in the Office Action. As mentioned above, this claim now defines how the upper and lower sides of the

top, namely the sides facing away from the crate and facing the crate are embodied. In accordance with the teachings of the invention in this embodiment these sides are provided with a profile that conforms to a profile of the lateral walls and to the profile of the bottom of the crate. In accordance with the embodiment covered by claim 17, the basic functionality of the basic crate is maintained, *i.e.* the additional top is sufficiently strong, and at the same time, the handling of the top is easy. To achieve this, the invention provides the top, which can be folded via fold lines in the corners and which is of a frame-like form following the shape of the lateral walls of the base crate. The upper and lower surfaces of the top conform to a profile of the lateral walls and a profile of the bottom of the crate, at least in the corner areas thereof. Providing the profile in a manner as it is for example shown in Fig. 5, namely in the corner area, makes the placement of the top onto the crate 20 easier as the correct positioning thereof can be readily obtained by registering the respective profiles with each other. At the same time, the profiles at the corners provide for a lateral fixing of the top with regard to the crate, which is advantageous as now the additional fastening means which engage the lattice-structured walls only have to be provided for a vertical fixing, *i.e.* the fastening means do not have to provide for additional lateral fixing.

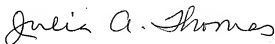
Thus, because none of the documents cited in the proceedings so far describes "shaping" the respective surfaces of the crate and the top in a manner as discussed above, claim 17 is also allowable over the available art.

Removal of the rejection and reconsideration are respectfully requested.

CONCLUSION

Applicant respectfully posits that the pending claims are distinguished from the art of record, and that all rejections of the claims are overcome. Accordingly, Applicant respectfully requests allowance of all claims. The Examiner is invited and encouraged to contact Applicant's attorney or agent at (650) 474-8400 should any questions arise.

Respectfully submitted,

A handwritten signature in cursive script that reads "Julia A. Thomas".

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